

# Defeat Devices and Tampering SEMA 2015

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# The Clean Air Act

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- The Clean Air Act (CAA) was enacted by Congress in 1970, and amended in 1977 and 1990.
- Title II of the CAA – Mobile Source Provisions
  - On-highway (motor vehicles and motor vehicle engines) and nonroad (nonroad vehicles and nonroad engines) are regulated.
  - Today's discussion is limited to motor vehicles, and focused on aftermarket parts and service.
  - Motor Vehicle is “any self-propelled vehicle designed for transporting persons or property on a street or highway.”  
CAA § 216(2)
- CAA § 203 contains the following prohibitions (among others) for which EPA may seek injunctive relief and a penalty.

# CAA Title II Prohibitions: Defeat Devices

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- The following acts and the causing thereof are prohibited –
  - For any person to manufacture or sell, or offer to sell, or install, a part or component for a motor vehicle, where
    - A principle effect of the part or component is to bypass, defeat, or render inoperative any emission control device, and
    - The person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

# CAA Title II Prohibitions: Tampering

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- The following acts and the causing thereof are prohibited –
  - For anyone to remove or render inoperative an emission control component on a certified motor vehicle or engine prior to sale or delivery to ultimate purchaser, or
  - For anyone to knowingly remove or render inoperative any emission control component on a certified motor vehicle or engine after sale and delivery to the ultimate purchaser.

CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A).

# Defeat Device and Tampering Examples

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- Alterations to Fueling, Timing Strategy
- DPF Delete
- EGR Delete
- SCR Delete
- Alterations to OBD
- Software and Hardware

# Memo 1A (Tampering Enforcement Policy)

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- Interim Tampering Enforcement Policy  
Memorandum 1A- (6/25/74) – (Memo 1A)
- Memo 1A allows the sale and use of aftermarket parts when an individual or company has a “reasonable basis” to believe their actions do not cause emission problems.
- EPA issues no approvals under Memo 1A.

# Memo 1A Requirements

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- In order to protect yourself from a charge of tampering if you install non-equivalent aftermarket parts, you should have in your records:
  - Emission test results from tests conducted in accordance with EPA's federal test procedure (FTP) using the correct test cycle showing that essentially similar vehicles meet the standards for the remainder of the vehicles' useful lives using your device *or*
  - An EPA Aftermarket Parts Certificate issued for the same part and covering the same vehicles on which you install the device.
  - Generally, the testing required for a CARB EO is the same as the testing required under Memo 1A because the test procedures are usually the same.
- Vehicle needs to perform the same on- and off-cycle

# Criminal Prohibitions

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- It is a crime to knowingly falsify, tamper with, render inaccurate, or fail to install any “monitoring device or method” required under the CAA. CAA § 113(c)(2)(C), 42 U.S.C. § 7413(c)(2)(C).
- Vehicle Onboard Diagnostics (OBD) are a “monitoring device or method” required by the CAA.



# Myth or Fact?

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- “I protected from selling a defeat device or tampering as long my customers use the modified vehicles for *competition use only*”
- MYTH! Under the CAA there is no “competition only” exemption for motor vehicles or motor vehicle engines. If it’s an EPA-certified motor vehicle, the CAA prohibits parts or service that increase emissions.